

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 July 2005

Case No. 2004-BLA-5333

In the Matter of:
ROY G. HALE,
Claimant,

v.

JOHNSON ELKHORN COAL CO., INC.,
Employer,
and
AMERICAN RESOURCES INSURANCE CO.,
Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest.

BEFORE: THOMAS F. PHALEN, JR.
Administrative Law Judge

APPEARANCES:
Susie Davis, Lay Representative
On behalf of Claimant

Timothy J. Walker, Esq.
On behalf of Employer/Carrier

DECISION AND ORDER – DENIAL OF BENEFITS

This is a decision and order arising out of a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1977, 30 U.S.C. §§ 901-962, ("the Act") and the regulations thereunder, located in Title 20 of the Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title.¹

¹ The Department of Labor amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80, 045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). On August 9, 2001, the United States District Court for the District of Columbia issued a Memorandum and Order upholding the validity of the new regulations. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

On November 19, 2003, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs, for a hearing. (DX 38).² A formal hearing on this matter was conducted on September 22, 2004, in Prestonsburg, Kentucky by the undersigned Administrative Law Judge. All parties were afforded the opportunity to call and to examine and cross examine witnesses, and to present evidence, as provided in the Act and the above referenced regulations.

ISSUES³

The issues in this case are:

1. Whether the Miner has pneumoconiosis as defined by the Act;
2. Whether the Miner's pneumoconiosis arose out of coal mine employment;
3. Whether the Miner is totally disabled; and
4. Whether the Miner's disability is due to pneumoconiosis.

(DX 38).

Based upon a thorough analysis of the entire record in this case, with due consideration accorded to the arguments of the parties, applicable statutory provisions, regulations, and relevant case law, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background

Roy Hale ("Claimant") was born on May 30, 1941; he was 63 years-old at the time of the hearing. (DX 2). He graduated from high school. (DX 2; Tr. 12). On June 15, 1959, Claimant married Thelma Campbell. (DX 2, 10; Tr. 11). Claimant has no dependent children. (DX 2; Tr. 11). I find that Claimant has one dependent for purposes of augmentation.

² In this Decision, "DX" refers to the Director's Exhibits, "EX" refers to the Employer's Exhibits, "CX" refers to the Claimant's Exhibits, and "Tr." refers to the official transcript of this proceeding.

³ At the hearing the Employer withdrew the following issues as uncontested: whether the claim was timely; whether Claimant is a miner; whether Claimant worked at least 13 years in or around one or more coal mines; whether claimant has one dependent for purpose of augmentation; whether the claimant is an eligible survivor of a miner; whether the named employer is the responsible operator; and whether miner's most recent period of cumulative employment of not less than one year was with the named responsible operator. (Tr. 8-9). The issues of modification and subsequent claim were also marked, but there is no evidence in the record that there has ever been a previously filed claim. In fact, he marked the "no" box on his application when asked if he had previously filed a federal claim for black lung benefits. (DX 2). Therefore, modification and subsequent claim issues are not applicable in this claim. Finally, Employer listed other issues that will not be decided by the undersigned; however, they are preserved for appeal. (DX 38, Item 18).

On his application for benefits, Claimant stated that he engaged in coal mine employment for 13 to 14 years. (DX 2). Claimant's last coal mine employment was as a night watchman, equipment servicer, and a blaster. (DX 5, 7; Tr. 13). Claimant described the physical requirements of the work to include sitting for six hours per day, standing for 6 hours per day, crawling 8-10 feet each day, lifting 5-100 pounds each day, and carrying 5-100 pounds each day. (DX 5). Claimant Social Security Earnings record shows he last worked in and around coal mines in 1994. (DX 9). He has not previously filed a state or federal Black Lung claim. (DX 2; Tr. 14).

Procedural History

Claimant filed a claim for benefits under the Act on May 14, 2002. (DX 2). On August 6, 2003, the District Director, Office of Workers' Compensation, issued a proposed decision and order – denial of benefits. (DX 29). On August 27, 2003, Claimant requested a formal hearing. (DX 31). On November 19, 2003, this matter was transferred to the Office of the Administrative Law Judges. (DX 38).

Length of Coal Mine Employment

On his application for benefits, Claimant stated that he engaged in coal mine employment for 13 to 14 years. (DX 2). The Director, in a proposed decision and order dated August 6, 2003, determined that Claimant has 9.49 years of coal mine employment. (DX 29). The parties have stipulated that the Claimant worked at least 13 years in or around one or more coal mines. (Tr. 7-8). I find that the record supports this stipulation, (DX 4-9), and therefore, I hold that the Claimant worked at least 13 years in or around one or more coal mines.

Claimant's last employment was in the Commonwealth of Kentucky; (DX 5), therefore, the law of the Sixth Circuit is controlling.⁴

Responsible Operator

Liability under the Act is assessed against the most recent operator which meets the requirements of §§ 725.494 and 725.495. The District Director identified Johnson Elkhorn Coal Co. Inc. as the putative responsible operator because it was the last operator to employ Claimant for a year. (DX 16, 24). Johnson Elkhorn Coal Co. Inc. does not contest this issue. (Tr. 8). After review of the record, I find that Johnson Elkhorn Coal Co. Inc. is properly designated as the responsible operator in this case.

MEDICAL EVIDENCE

Section 718.101(b) requires any clinical test or examination to be in substantial compliance with the applicable standard in order to constitute evidence of the fact for which it is proffered. *See* §§ 718.102 - 718.107. The claimant and responsible operator are entitled to

⁴ Appellate jurisdiction with a federal circuit court of appeals lies in the circuit where the miner last engaged in coal mine employment, regardless of the location of the responsible operator. *Shupe v. Director, OWCP*, 12 B.L.R. 1-200 (1989)(en banc).

submit, in support of their affirmative cases, no more than two chest x-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two blood gas studies, no more than one report of each biopsy, and no more than two medical reports. §§ 725.414(a)(2)(i) and (3)(i). Any chest x-ray interpretations, pulmonary function studies, blood gas studies, biopsy report, and physician's opinions that appear in a medical report must each be admissible under § 725.414(a)(2)(i) and (3)(i) or § 725.414(a)(4). §§ 725.414(a)(2)(i) and (3)(i). Each party shall also be entitled to submit, in rebuttal of the case presented by the opposing party, no more than one physician's interpretation of each chest x-ray, pulmonary function test, arterial blood gas study, or biopsy submitted, as appropriate, under paragraphs (a)(2)(i), (a)(3)(i), or (a)(3)(iii). §§ 725.414(a)(2)(ii), (a)(3)(ii), and (a)(3)(iii). Notwithstanding the limitations of §§ 725.414(a)(2) or (a)(3), any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence. § 725.414(a)(4). The results of the complete pulmonary examination shall not be counted as evidence submitted by the miner under § 725.414. § 725.406(b).

Claimant selected Dr. Imtiaz Hussain to provide his Department of Labor sponsored complete pulmonary examination. (DX 11). Dr. Hussain conducted the examination on August 21, 2002. I admit Dr. Hussain's report under § 725.406(b). I also admit Dr. Barrett's quality-only interpretation of the chest x-ray under § 725.406(c). (DX 13).

Claimant completed a Black Lung Benefits Act Evidence Summary Form. (CX 3). Claimant designated Drs. Ira Potter and Ragu Sundaram's interpretations of the October 10, 2002 chest x-ray. Claimant's evidence complies with the requisite quality standards of §§ 718.102-107 and the limitations of § 725.414 (a)(3). Therefore, I admit the evidence Claimant designated in its summary form.

Employer completed a Black Lung Benefits Act Evidence Summary Form. (EX 2). The only additional evidence Employer designated was Dr. Poulos' October 22, 2002 x-ray interpretation as rebuttal evidence. Employer's evidence complies with the requisite quality standards of §§ 718.102-107 and the limitations of § 725.414(a)(3). Therefore, I admit the evidence Employer has designated in its summary form.

X-RAYS

Exhibit	Date of X-ray	Date of Reading	Physician / Credentials	Interpretation
DX 12	8/21/02	8/21/02	Hussain	Negative
DX 13	8/21/02	9/15/02	Barrett, BCR ⁵ , B-reader ⁶	Quality only

⁵ A physician who has been certified in radiology or diagnostic roentgenology by the American Board of Radiology, Inc., or the American Osteopathic Association. See 20 C.F.R. § 727.206(b)(2)(III). The qualifications of physicians are a matter of public record at the National Institute of Occupational Safety and Health reviewing facility at Morgantown, West Virginia.

⁶ A "B" reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successful completion of an examination conducted by or on behalf of the Department of Health and Human Services. This is a matter of public record at HHS National Institute for Occupational Safety and Health reviewing facility at Morgantown, West Virginia. (42 C.F.R. § 37.51) Consequently, greater weight is given to a diagnosis by a "B" Reader. See *Blackburn v. Director, OWCP*, 2 B.L.R. 1-153 (1979).

CX 1	10/10/02	10/10/02	Potter ⁷	1/1 pp
CX 2	10/10/02	10/19/02	Sundaram ⁸	2/2 pt
EX 1	10/10/02	06/30/03	Poulos, BCR, B-reader	Negative

PULMONARY FUNCTION TESTS

Exhibit/ Date	Co-op./ Undst./ Tracings	Age/ Height	FEV₁	FVC	MVV	FEV₁/ FVC	Qualifying Results
DX 12 8/21/02	Fair/ Fair/ Yes	61 71"	2.73 2.86*	3.87 4.45*	62 51*	70.5 64.3*	No No*

* post-bronchodilator values

ARTERIAL BLOOD GAS STUDIES

Exhibit	Date	pCO₂	pO₂	Qualifying
DX 12	8/21/02	40.3 39.1*	65 77*	No No*

*post-exercise values

Narrative Reports

Dr. Imtiaz Hussain examined the Claimant on August 21, 2002. (DX 12). Based on symptomatology (sputum, wheezing, dyspnea, and cough), employment history (15 years as a coal miner), individual history (attacks of wheezing, arthritis, and heart disease), family history (high blood pressure, heart disease, allergies, and stroke), smoking history (2 years at ½ pack per day, and continues to smoke), physical examination (bilateral rhonchi), chest x-ray (congestive heart failure), PFT (poor effort), ABG (hypoxemia), and an EKG (normal), Dr. Hussain diagnosed congestive heart failure due to coronary artery disease. Dr. Hussain opined that Claimant's congestive heart failure has caused a mild pulmonary impairment. He also stated that Claimant does not have an occupational lung disease which was caused by coal mine employment, and that he has the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment.

⁷ The June 7, 2004 "B-reader" list states that Dr. Potter has been an A-reader since September 29, 1973.

⁸ The June 7, 2004 "B-reader" list states that Dr. Potter has been an A-reader since June 17, 1980.

Smoking History

At the hearing Claimant testified that he started smoking in the 1960's, quit for 15 years beginning in the late 1980's, started back again around 2000, and quit again in 2004. (Tr. 16-17). Dr. Hussain reported that Claimant smoked for two years at a rate of ½ pack per day, and continued to smoke the time of his 2002 examination. (DX 12). The PFT reports, however, reported that Claimant smoked at a rate of one pack per day. (DX 12).

According to the evidence in the record, Claimant's smoking history falls somewhere between a minimum of one pack-year, according to Dr. Hussain, to a maximum of 29 years based on Claimant's testimony. I presume that the Claimant would not purposely overstate his smoking history, thereby presenting a possible detriment to his own case. As a result, I find Claimant's testimony as to length of cigarette smoking to be the most persuasive and find that the Claimant has smoked for approximately 29 years, but quit in 2004. Claimant did not testify as to rate, and due to Dr. Hussain's understatement as to length of smoking, I do not consider the rate he attributed to Claimant to be accurate either. The only other evidence of record concerning rate comes from the reports by the PFT technician which states that Claimant smoked 1 pack per day. Therefore, I find that Claimant has a 29 pack-year history of cigarette smoking, but quit in 2004.

DISCUSSION AND APPLICABLE LAW

Mr. Hale's claim was made after March 31, 1980, the effective date of Part 718, and must therefore be adjudicated under those regulations. To establish entitlement to benefits under Part 718, Claimant must establish, by a preponderance of the evidence, that he:

1. Is a miner as defined in this section; and
2. Has met the requirements for entitlement to benefits by establishing that he:
 - (i) Has pneumoconiosis (see § 718.202), and
 - (ii) The pneumoconiosis arose out of coal mine employment (see § 718.203), and
 - (iii) Is totally disabled (see § 718.204(c)), and
 - (iv) The pneumoconiosis contributes to the total disability (see § 718.204(c)); and
3. Has filed a claim for benefits in accordance with the provisions of this part.

Section 725.202(d)(1-3); *see also* §§ 718.202, 718.203, and 718.204(c).

Pneumoconiosis

In establishing entitlement to benefits, Claimant must initially prove the existence of pneumoconiosis under § 718.202. Claimant has the burden of proving the existence of pneumoconiosis, as well as every element of entitlement, by a preponderance of the evidence. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). Pneumoconiosis is defined by the regulations:

(a) For the purpose of the Act, “pneumoconiosis” means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or “clinical” pneumoconiosis and statutory, or “legal” pneumoconiosis.

(1) *Clinical Pneumoconiosis*. “Clinical pneumoconiosis” consists of those diseases recognized by the medical community as pneumoconiosis, i.e., conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers’ pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) *Legal Pneumoconiosis*. “Legal pneumoconiosis” includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For the purposes of this section, a disease “arising out of coal mine employment” includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

(c) For purposes of this definition, “pneumoconiosis” is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

Sections 718.201(a-c).

Section 718.202(a) sets forth four methods for determining the existence of pneumoconiosis.

(1) Under § 718.202(a)(1), a finding that pneumoconiosis exists may be based upon x-ray evidence. The record contains four interpretations of two chest x-rays, and one quality-only interpretation. Dr. Hussain interpreted the August 21, 2002 x-ray as negative for pneumoconiosis. There were no positive readings. Therefore, I find the August 21, 2002 x-ray is negative for pneumoconiosis.

Drs. Potter and Sundaram, both A-readers, interpreted the October 10, 2002 x-ray as positive for pneumoconiosis. Dr. Poulos, a radiologist and B-reader, re-read the film as negative for pneumoconiosis. I accord greater probative weight to the negative interpretation of Dr. Poulos in comparison to the contrary interpretation of Dr. Potter and Sundaram based on Dr. Poulos' superior credentials. Therefore, the October 22, 2002 film is negative for pneumoconiosis.

I have determined that both of the x-rays in evidence are negative for pneumoconiosis. Also, the only radiologist to offer an x-ray interpretation determined the film to be negative for the disease. As a result, I find that the preponderance of the chest x-ray evidence establishes that there is no pneumoconiosis. Therefore, I find that Claimant has failed to establish the presence of pneumoconiosis under subsection (a)(1).

(2) Under § 718.202(a)(2), a determination that pneumoconiosis is present may be based, in the case of a living miner, upon biopsy evidence. The evidentiary record does not contain any biopsy evidence. Therefore, I find that the Claimant has failed to establish the existence of pneumoconiosis through biopsy evidence under subsection (a)(2).

(3) Section 718.202(a)(3) provides that pneumoconiosis may be established if any one of several cited presumptions are found to be applicable. In this case, the presumption of § 718.304 does not apply because there is no evidence in the record of complicated pneumoconiosis. Section 718.305 is not applicable to claims filed after January 1, 1982. Finally, the presumption of § 718.306 is applicable only in a survivor's claim filed prior to June 30, 1982. Therefore, Claimant cannot establish pneumoconiosis under subsection (a)(3).

(4) The fourth and final way in which it is possible to establish the existence of pneumoconiosis under § 718.202 is set forth in subsection (a)(4) which provides in pertinent part:

A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

§ 718.202(a)(4).

This section requires a weighing of all relevant medical evidence to ascertain whether or not the claimant has established the presence of pneumoconiosis by a preponderance of the evidence. Any finding of pneumoconiosis under § 718.202(a)(4) must be based upon objective medical evidence and also be supported by a reasoned medical opinion. A reasoned opinion is one which contains underlying documentation adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19, 1-22 (1987). Proper documentation exists where the physician sets forth the clinical findings, observations, facts, and other data on which

he bases his diagnosis. *Oggero v. Director, OWCP*, 7 B.L.R. 1-860 (1985). A brief and conclusory medical report which lacks supporting evidence may be discredited. *See Lucostic v. United States Steel Corp.*, 8 B.L.R. 1-46 (1985); *see also, Mosely v. Peabody Coal Co.*, 769 F.2d 257 (6th Cir. 1985). Further, a medical report may be rejected as unreasonable where the physician fails to explain how his findings support his diagnosis. *See Oggero*, 7 B.L.R. 1-860.

The evidentiary record contains one narrative medical opinion by an examining physician. Based on employment history, a negative x-ray, physical examination, and non-qualifying ABG and PFT tests, Dr. Hussain determined that Claimant did not suffer from pneumoconiosis. As the data he relied upon adequately supports his conclusion, I find Dr. Hussain's opinion is well-documented and well-reasoned. Therefore, I accord Dr. Hussain's opinion probative weight as to whether Claimant suffers from pneumoconiosis.

The record contains one reasoned and documented medical opinion concluding that Claimant does not suffer from clinical or legal pneumoconiosis. Furthermore, even without Dr. Hussain's reports, there are no reports concluding that Claimant suffers from pneumoconiosis. As a result, I find that the Claimant has failed to establish the presence of the disease by a preponderance of the evidence under subsection (a)(4).

Claimant has failed to establish the presence of pneumoconiosis under subsection (a)(1)-(4). Therefore, after weighing all evidence of pneumoconiosis together under §718.202 (a), I find that Claimant has failed to establish the presence of pneumoconiosis.

Total Disability

To be entitled to benefits under the Act, Claimant must also demonstrate that he is totally disabled from performing his usual coal mine work or comparable work due to pneumoconiosis under one of the five standards of § 718.204(b) or the irrebuttable presumption referred to in § 718.204(b). The Board has held that under Section 718.204(b), all relevant probative evidence, both like and unlike must be weighed together, regardless of the category or type, in the determination of whether the Claimant is totally disabled. *Shedlock v. Bethlehem Mines Corp.*, 9 B.L.R. 1-195 (1986); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 B.L.R. 1-231 (1987). Claimant must establish this element of entitlement by a preponderance of the evidence. *Gee v. W.G. Moore & Sons*, 9 B.L.R. 1-4 (1986).

I have determined that Claimant has not established that he suffers from complicated pneumoconiosis. Therefore, the irrebuttable presumption of § 718.304 does not apply.

Total disability can be shown under § 718.204(b)(2)(i) if the results of pulmonary function studies are equal to or below the values listed in the regulatory tables found at Appendix B to Part 718. The only PFT of record did not produce values equal to or below those found in Appendix B of Part 718. Therefore, I find that Claimant has failed to establish total disability under subsection (b)(2)(i).

Total disability can be demonstrated under § 718.204(b)(2)(ii) if the results of arterial blood gas studies meet the requirements listed in the tables found at Appendix C to Part 718.

The only ABG of record did not produce values that met the requirements of the tables found at Appendix C to Part 718. Therefore, I find that Claimant has failed to establish total disability under subsection (b)(2)(ii).

Total disability may also be shown under § 718.204(b)(2)(iii) if the medical evidence indicates that Claimant suffers from cor pulmonale with right-sided congestive heart failure. The record does not contain any evidence indicating that Claimant suffers from cor pulmonale with right-sided congestive heart failure. Therefore, I find that Claimant has failed to establish the existence of total disability under subsection (b)(2)(iii).

Section 718.204(b)(2)(iv) provides for a finding of total disability if a physician, exercising reasoned medical judgment based on medically acceptable clinical or laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevented the miner from engaging in his usual coal mine employment or comparable gainful employment. Claimant's usual coal mine employment as a night watchman, equipment servicer, and a blaster included sitting for six hours per day, standing for 6 hours per day, crawling 8-10 feet each day, lifting 5-100 pounds each day, and carrying 5-100 pounds each day. (DX 5, 7; Tr. 13).

The exertional requirements of the claimant's usual coal mine employment must be compared with a physician's assessment of the claimant's respiratory impairment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569 (6th Cir. 2000). Once it is demonstrated that the miner is unable to perform his usual coal mine work, a *prima facie* finding of total disability is made and the party opposing entitlement bears the burden of going forth with evidence to demonstrate that the miner is able to perform "comparable and gainful work" pursuant to § 718.204(b)(1). *Taylor v. Evans & Gambrel Co.*, 12 B.L.R. 1-83 (1988). Nonrespiratory and nonpulmonary impairments have no bearing on establishing total disability due to pneumoconiosis. § 718.204(a); *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241 (1994). All evidence relevant to the question of total disability due to pneumoconiosis is to be weighed, with the claimant bearing the burden of establishing by a preponderance of the evidence the existence of this element. *Mazgaj v. Valley Camp Coal Co.*, 9 B.L.R. 1-201 (1986).

Drs. Hussain concluded that Claimant was not totally disabled from a pulmonary standpoint. His opinion is supported by the objective evidence in the record. As a result, I find his opinion concerning total disability to be well-reasoned and well-documented, and therefore, entitled to probative weight.

Even if I had not found Dr. Hussain's opinion to be entitled to probative weight, there is no evidence in the record supporting Claimant's contention that he is totally disabled. Therefore, I find that Claimant has not proven by a preponderance of the evidence that he is totally disabled under § 718.204(b)(iv).

Claimant has failed to establish that he is totally disabled under subsection (b)(i)-(iv). Therefore, after weighing all evidence concerning total disability under § 718.204 (b), I find that Claimant has failed to establish that he is totally disabled due to pneumoconiosis.

Entitlement

Claimant, Roy Hale, has failed to establish either the existence of pneumoconiosis under §718.202(a) or total disability under § 718.204(b)(2). Therefore, I find that Mr. Hale is not entitled to benefits under the Act.

Attorney's Fees

An award of attorney's fees is permitted only in cases in which the claimant is found to be entitled to benefits under the Act. Because benefits are not awarded in this case, the Act prohibits the charging of any fee to the Claimant for the representation and services rendered in pursuit of the claim.

ORDER

IT IS ORDERED that the claim of Roy Hale for benefits under the Act is hereby DENIED.

A

THOMAS F. PHALEN, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 days from the date of this decision, by filing notice of appeal with the Benefits Review Board, P.O. Box 37601, Washington, D.C. 20013-7601. **A copy of a notice of appeal must also be served on Donald S. Shire, Esquire, Associate Solicitor for Black Lung Benefits, Frances Perkins Building, Room N-2117, 200 Constitution Avenue, NW, Washington, D.C. 20210.**